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November 8, 1995

Mr. William Caton
Secretary of the Commission
Federal Communications Commission
1919 M. Street, N.W., Room 222
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL

RE: CC Docket No. 94-97, Phase II: Opposition of Kansas City Fibernet to the Direct Case of Southwestern Bell Telephone Company.

Dear Mr. Caton:

Enclosed please find the original and seven copies of the Opposition of Kansas City Fibernet to the Direct Case of Southwestern Bell Telephone Company for filing In the Matter of Local Exchange Carriers' Rates, Terms, and Conditions for Expanded Interconnection Through Virtual Collocation for Special Access and Switched Transport, CC Docket No. 94-97, Phase II before the Federal Communications Commission.

Pursuant to the Designation Order, one copy has been submitted to Commission's commercial copying firm, International Transcription Service, and one copy has been submitted to the Tariff Division of the Commission.

Please file stamp the extra copy and return to me in the provided self-addressed, stamped envelope.

Should you have any questions or comments about this filing, do not hesitate to contact me at the number indicated above. Thank you for your assistance with this matter.

Very truly yours,

Susan C. Gentz

Susan C. Gentz

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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In the Matter of	§	
	§	
Local Exchange Carriers' Rates,	§	
Terms, and Conditions for	§	CC Docket No. 94-97
Expanded Interconnection Through	§	Phase II
Virtual Collocation for Special	§	
Access and Switched Transport	§	

OPPOSITION OF KANSAS CITY FIBERNET, L.P. TO THE DIRECT CASE OF SOUTHWESTERN BELL TELEPHONE COMPANY

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November 8, 1995

SUMMARY

Kansas City Fibernet (Fibernet) submits this its Opposition to the Direct Case of Southwestern Bell Telephone Company (SWBT) filed in the instant proceeding. As a competitive access provider that has two interconnection arrangements with SWBT in Kansas City, Fibernet is greatly affected by the rates, terms and conditions under which SWBT offers expanded interconnection service. Unfortunately, the Commission has not permitted interconnectors such as Fibernet access to the proprietary cost data submitted by SWBT, thereby precluding meaningful review and analysis of SWBT's interconnection rates. The problems with SWBT's interconnection tariff do not, however, end with its rate levels. The terms and conditions, and SWBT's interpretation and application of such terms and conditions, afford SWBT continued opportunities to frustrate interconnectors' ability to compete with SWBT in the local access market.

Fibernet's Opposition addresses SWBT's responses to the questions posed by the Commission and urges the Commission to take an active role in ensuring that SWBT is not successful in its ongoing efforts to impede the implementation of the Commission's expanded interconnection goals and policies.

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of	§	
	§	
Local Exchange Carriers' Rates,	§	
Terms, and Conditions for	§	**CC Docket No. 94-97**
Expanded Interconnection Through	§	**Phase II**
Virtual Collocation for Special	§	
Access and Switched Transport	§	

OPPOSITION OF KANSAS CITY FIBERNET, L.P. TO THE
DIRECT CASE OF SOUTHWESTERN BELL TELEPHONE COMPANY

Kansas City Fibernet, L.P. ("Fibernet"), a competitive access provider that operates solely in Kansas City, Missouri, files its Opposition to the Direct Case of Southwestern Bell Telephone Company ("SWBT").

Background

Because SWBT's cost data for Interconnector Designated Equipment ("IDE") have not been made available, Fibernet cannot provide a meaningful response to each of SWBT's justifications for its proposed rates. Fibernet must rely on the Commission to analyze SWBT's IDE costs and set rates that are reasonable and non-discriminatory. What Fibernet can readily conclude from SWBT's Direct Case, however, is that SWBT refuses to recognize interconnectors as its customers and chooses instead to impose every obstacle it can devise and extract every penny it can demand. If SWBT's proposed rates are approved, the end result is clear: it will be prohibitively expensive for Fibernet to further pursue interconnection with SWBT. The Commission should not permit SWBT's continuing attempts to thwart the implementation of the Commission's expanded interconnection policies, as set forth in the Virtual Collocation Order.[1]

SWBT's proposed tariff requires special scrutiny because of SWBT's clear hostility toward its competitors

SWBT has refused to offer physical collocation or implement the $1 sale and lease-back approach utilized by the vast majority of local exchange carriers and, instead, insists on purchasing IDE and providing it at tariffed rates, despite the problems this creates for both SWBT and interconnectors. From an administrative perspective alone, SWBT's decision means that staff time will be devoted and expenses incurred to keep current a list of IDE and associated purchase prices. Rates will have to be developed and updated for each item of IDE. Lists of IDE that are standard for SWBT will have to be maintained and disseminated to interconnectors just to keep them apprised of training requirements.[2]

Other issues arise as well. As SWBT complains, purchasing IDE requested by interconnectors places it at risk that the equipment's cost will not be recovered unless the interconnector pays for it in advance.[3] This is made more likely, of course, by SWBT's current plan that in the event an interconnector discontinues service, "all equipment dedicated to the specific interconnector [will] be

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1 Expanded Interconnection with Local Telephone Company Facilities, CC Docket 91-141, Memorandum Opinion and Order, FCC No. 94-190 at ¶ 36 (released July 25, 1994) (Virtual Collocation Order).

2 SWBT's Direct Case, pp. 25-26.

3 SWBT's Direct Case, p. 18.

removed from the central office location and not reused by SWBT."[4] SWBT further complains that it does not wish to "finance its competitors' equipment purchases.[5] SWBT could totally avoid giving any financial benefit to its competitors if it had not usurped their responsibility for equipment purchases.

SWBT's insistence on purchasing IDE also raises the question of how it will price IDE when the interconnector offers to sell it to SWBT at a price lower than the price charged to SWBT by other vendors. In response to the Commission's directive to explain how it will deal with this situation, SWBT states that (1) it will add to the lower price offered by the interconnector the overhead loading and internal costs that SWBT uses to calculate its tariffed rate for that equipment; and (2) in order to avoid disclosing a negotiated proprietary vendor price, it will reduce the amount of its overhead loading.[6] The obvious concern is that SWBT's decision to be flexible in its overhead loadings inevitably will lead to discrimination amongst interconnetors, which would not be possible, of course, if SWBT were not insisting on purchasing the IDE.

SWBT recognizes some of the problems that its obstinacy creates, but rather than changing its approach and thereby reduce its risks and eliminate useless effort and expense, SWBT uses them as a justification for requiring upfront payment of non-recurring

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[4] SWBT's Direct Case, p 19. The scrapping of any equipment that is standard for SWBT is extremely wasteful if the equipment's age is not beyond its useful life.

[5] SWBT's Direct Case, p. 18.

[6] SWBT's Direct Case, p. 6.

charges that recover the full cost of IDE. Fibernet is convinced that SWBT's insistence on creating this cumbersome and difficult process for dealing with IDE is driven by its hostility toward the interconnectors and its opposition to the Commission's Virtual Collocation Order.

SWBT's Direct Case is permeated with references to interconnectors as SWBT's competitors, but contains not one reference to interconnectors as SWBT's customers. Apparently, SWBT has created in its own mind a dichotomy between interconnectors and all of its other customers. A few specific examples make SWBT's position clear. The Commission in paragraph 30(b) directed SWBT to

> identify and justify any differences between [its] recovery of the costs of maintenance and repair of IDE and [its] recovery of the costs of maintenance and repair of equipment used to provide [its] comparable DS1 and DS3 services.

In response, SWBT states that "there are no differences in the application of these ACFs to IDE, nor to equipment used by SWBT to provide services to its customers."[7]

Similarly, in paragraph 70(d), the Commission directed SWBT to

> address whether it is reasonable to use [its] costs to train [its] technicians to service equipment used to provide [its] comparable DS1 and DS3 services as a guideline in developing interconnector training expenses.

SWBT responds that "[n]either SWBT nor its customers should be forced to share the burden of training costs for 'nonstandard' equipment caused by an interconnector. More appropriately, charges

[7] SWBT's Direct Case, pp. 9-10.

for such training could be recovered by the interconnector through its charges to its customers."[8]

And, in answer to the Commission's directive that SWBT "discuss whether it would be reasonable to notify interconnectors of [its] specific maintenance and repair intervals" by including this information in their tariffs, SWBT states that the ARMIS

> reports do not distinguish between IDE repair response and the repair response for equipment used by SWBT to provision its services to its customers. SWBT provides services to end-user customers that connect to IDE in the SWBT wire centers and will continue to provide high level service to these customers as well as interconnectors.[9]

Finally, in response to the Commission's instruction in paragraph 63(a) to explain why SWBT is recovering the cost of IDE through non-recurring charges, SWBT justifies its tariff structure as follows:

> The nonrecurring charges SWBT has identified in its tariff attempt to ensure the total recovery of all nonrecurring costs associated with IDE, and to protect SWBT and its customers from bearing the costs caused by an interconnector. An interconnector must be responsible for all costs caused by the IDE . . . dedicated to its exclusive use. SWBT has no desire to, nor should be required to, finance its competitors' operations. Recovering these cost [sic] through recurring charges unnecessarily places SWBT and its customers at the financial risk of third parties.[10]

Given SWBT's palpable hostility toward interconnectors, and its blatant exclusion of them from SWBT's concept of "customer," Fibernet believes that SWBT's proposed rates, terms and conditions

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8 SWBT's Direct Case, p. 25.

9 SWBT's Direct Case, p. 34.

10 SWBT's Direct Case, pp. 17-18.

warrant particularly careful scrutiny to be certain that opportunities for SWBT to act anti-competitively are eliminated now. Just as the Commission and state regulatory bodies had to ensure throughout the 1980's that interexchange carriers were treated as fairly as local exchange carrier (LEC) access customers, so must the Commission insist on the LEC's fair treatment of interconnector customers.

SWBT's reliance on non-recurring charges for IDE, combined with huge overhead loadings and its intention to scrap the IDE paid for by the interconnector, make interconnection prohibitively expensive

Fibernet's objections to SWBT's decision to purchase and tariff IDE, rather than offer physical collocation or the $1 sale and lease-back structure favored by the majority of the industry, were set out in its Opposition to SWBT's Direct Case, CC Docket No. 94-97, Phase I. Those objections will not be repeated here. Several of SWBT's assertions require a response, however.

SWBT states that non-recurring charges are necessary to protect SWBT and its customers.[11] Fibernet understands SWBT to be concerned that an interconnector will cancel service before the full cost of the IDE could be recovered through recurring charges. SWBT also complains that it should not be required to finance its competitors' operations, and that capital investment dollars spent on IDE would take away investment that would benefit SWBT's "own customers."[12] None of these arguments is persuasive.

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11 SWBT's Direct Case, p. 18.

12 SWBT's Direct Case, p. 18.

Every item of equipment SWBT acquires for the purpose of adding to or improving its network or services is a capital investment that SWBT is projecting it can recover through the rates it charges, the vast majority of which are recurring charges. To the extent that any capital investment is not recovered immediately with an upfront charge, SWBT is routinely accepting the risk that the investment will cease to be used before its cost has been recovered. This can occur for any type of customer, for a number of reasons. Perhaps the demand for the service that uses the equipment disappears or the equipment becomes obsolete sooner than expected. It may be that the customer for whom the equipment was put in place leaves SWBT's network. To the extent that SWBT is acquiring equipment to provide services to customers other than interconnectors and recovering those costs through recurring charges, it is reasonable to require SWBT to recover the costs of IDE through recurring charges as well.

Only if one assumes that interconnectors will order IDE that is not standard equipment for SWBT or for any other communications provider to whom the equipment could be sold, can one conclude that the IDE has no value to SWBT and therefore should be paid for, in advance, by the interconnector. SWBT's Direct Case does not support such an assumption. SWBT has not demonstrated that interconnectors habitually are choosing nonstandard equipment. Fibernet, for example, uses AT&T equipment, and this equipment is standard for SWBT. Absent concrete evidence that interconnectors are choosing equipment that will not even have any salvage value to

SWBT, the Commission should reject SWBT's proposed nonrecurring rate tariff structure.

SWBT should not be permitted to drive up the costs of its competitors simply by choosing to adopt a policy of not reusing IDE. To say that SWBT "has no forecasted use for IDE after a virtual collocation arrangement is terminated"[13] is not the same as demonstrating that there is in fact no use for the equipment. Reusable equipment can be identified and interconnectors should be charged recurring rates for this equipment.

Fibernet finds particularly offensive SWBT's policy decision to trash IDE upon termination of a virtual collocation arrangement. Under SWBT's proposed tariff, the interconnector has paid for it in full. The interconnector should be given this IDE if the interconnector wants it, as it may be that the interconnector can reconfigure it, use it elsewhere or sell it for salvage value. There is no reason to give SWBT a windfall by allowing it to keep and use the IDE, if that is SWBT's real intention, or to recover its salvage value for itself. There is no reason to commit waste where the equipment still has some value.

Finally, as for SWBT's assertion that using recurring charges would have the effect of shifting its capital resources away from its customers and the public, Fibernet finds this argument specious. Any rational investment decision is based on the ability to earn a reasonable return on that investment; if a reasonable return can be earned, the capital can be found. It is incorrect to

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13 SWBT's Direct Case, p. 19 (emphasis added).

state that SWBT's ability to obtain capital is fixed or finite. This is not a situation where competitors are being pitted against the public for a share of scarce resources.

SWBT has attempted to justify its anti-competitive rate structure by stating that the "requirement to pay IDE costs as a one-time nonrecurring charge for virtual collocation is fundamentally the same financial arrangement" as the purchase of IDE by an interconnector for physical collocation.[14] This is simply not true. Under a physical collocation arrangement, Fibernet could control the cost of IDE by dealing directly with equipment vendors, taking advantage of its or its owners' purchasing power and the availability of volume discounts, and would not be required to pay overhead loadings that can double that cost. And, unlike SWBT, Fibernet would have a strong incentive to negotiate the lowest possible purchase price from IDE vendors. Also, under physical collocation, Fibernet would own the IDE and would have the right to remove it for reuse or salvage upon termination of the collocation arrangement, rather than giving its capital investment to SWBT.

Fibernet became an interconnector customer of SWBT on a physical collocation basis. Fibernet is committed to continuing to provide service to its end user customers and has no intention of terminating the service it receives from SWBT now that virtual collocation is required instead. But, Fibernet will not expand into other central offices in SWBT territory at the rates proposed

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[14] SWBT's Direct Case, p. 18.

in SWBT's tariffs. The imposition of non-recurring charges coupled with the incredible overhead loadings SWBT has proposed result in an upfront investment that cannot be recovered within a reasonable time frame. Fibernet competes with SWBT's DS1 and DS3 services; its rates must be competitive. Fibernet cannot compete effectively under a cost structure that is skewed to the degree SWBT proposes in its tariff. The real losers, of course, are the customers who unwittingly believed that competitive alternatives would continue to exist and expand in the local exchange marketplace. SWBT should not be allowed to undermine and frustrate the goals of the Commission's Virtual Collocation Order.

SWBT should be required to provide its maintenance and repair intervals

SWBT objects to including information on its maintenance and repair intervals in its interconnection tariff on the ground that this information is unnecessary, and would be expensive to produce and update.[15] SWBT further implies that anti-competitive impacts are of no concern because "[t]here is no benefit to SWBT to maintain and repair IDE in less than a reasonable and equitable time frame."[16] Fibernet disagrees. Any delay in maintenance or repair offers the potential for interconnectors to lose customers to SWBT. It is simply inconceivable that SWBT would be unaware of this potential.

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15 SWBT's Direct Case, pp. 33-35.

16 SWBT's Direct Case, p. 34.

Repair intervals are a part of Fibernet's contracts with its customers because customers want certainty in their carrier's obligations to restore service. At present, Fibernet's commitments are based on its own ability and its best estimate of SWBT's ability to respond to an outage. Fibernet cannot be certain, however, that SWBT's repair intervals are consistent with a customer's needs and Fibernet's contractual obligations, since SWBT's repair interval information is not included in the tariff. Furthermore, Fibernet has no opportunity to negotiate with SWBT for a shorter interval, if necessary to meet a particular customer's needs.

Fibernet finds SWBT's objections unconvincing, particularly its claim that "it is unreasonable to require [it] to expend the time and resources required" to produce this information.[17] The Commission specifically directed SWBT to state "whether it would benefit interconnectors, without being unduly burdensome" to include restoration and repair information in its tariff.[18] SWBT did not address the potential benefit to interconnectors, nor did it demonstrate (or even allege) that providing this information, in fact, would be unduly burdensome. SWBT's response consists of nothing more than unsupported assertions that requiring it to provide this information would be unreasonable.

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[17] SWBT's Direct Case, p. 33. As noted earlier, SWBT has undertaken a significant administrative burden by deciding to tariff IDE. If SWBT were truly concerned about the use of its resources, it would have chosen to offer physical collocation or selected the $1 sale and lease back option instead.

[18] Paragraph 91(b).

Conclusion

It is imperative that, as the Commission evaluates the reasonableness of SWBT's interconnection tariff, it remain cognizant of SWBT's continued opposition to the Virtual Collocation Order and SWBT's strong motivation to utilize interconnection rates and conditions that thwart the implementation of the Commission's interconnection policies. Without the active oversight and intercession of the Commission, Fibernet and other interconnectors will be economically foreclosed from offering customers a viable alternative to the incumbent LEC and the Commission's goal of encouraging the development of competition in the local access market will be permanently frustrated.

Respectfully submitted,

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By: Susan C. Gentz
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Opposition of Kansas City Fibernet, L.P. to the Direct Case of Southwestern Bell Telephone Company has been filed with the Commission and mailed to all parties of record on this the 8th day of November, 1995.

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